

)	
B.E., Appellant)	
)	
and)	Docket No. 09-2340
)	Issued: August 23, 2010
DEPARTMENT OF VETERANS AFFAIRS,)	
VETERANS ADMINISTRATION MEDICAL)	
CENTER, Decatur, GA, Employer)	
)	

Case submitted on the record

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

On September 23, 2009 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated September 4, 2009 which denied her claim for a recurrence of disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

The issue is whether appellant met her burden of proof to establish a recurrence of disability beginning February 6, 2004 causally related to her October 5, 1997 employment injury.

On October 14, 1997 appellant then a 49-year-old medical technician filed a traumatic injury claim alleging that she sustained an injury on October 5, 1997. She alleged that she had recurring ganglion cysts aggravated by stress and tension caused by typing and drawing blood. The employing establishment indicated that appellant did not stop work. The claim was treated as an uncontroverted claim with no time lost.

The Office received notes dated October 9, 1997 from a nurse practitioner, who advised that appellant was having pain in the ulnar aspect of the right wrist with pain into the lower arm,

and some pain in the fifth finger, which bothered her for three months. The nurse practitioner noted that appellant had the same symptoms in the late 1980's. She related that appellant believed her condition was aggravated by her work. The nurse practitioner diagnosed pain in the right wrist and lower arm.

An October 14, 1997 note from Dr. Jacquelyn A. Fletcher, a resident specializing in physiatry, noted no evidence of carpal tunnel syndrome. In an October 14, 1997 report, Dr. Lester S. Duplechan, a Board-certified physiatrist, noted that appellant reported right dorsal wrist pain and paresthesias along the dorsal aspect of the forearm and arm with excessive typing and wrist extension. He diagnosed pain in the right dorsal wrist, ganglion cyst, mild tendinitis and right upper bilateral carpal tunnel syndrome.

In an October 16, 1997 progress report, Bridget M. Brown, an occupational therapist, noted that appellant was referred to occupational therapy with a diagnosis of left dorsal wrist ganglion cyst and extensor digitorum and tendinitis. She advised that appellant would benefit from stretching exercises and provided with information to that effect. Ms. Brown noted that appellant would follow through with her stretching exercises and she would assess the need for a splint if pain persists. On April 1, 2008 she noted that appellant came in requesting a splint. However, Ms. Brown advised that, due to the length of time since her last evaluation, a new consultation was needed.

The Office received an August 3, 1998 report, from Dr. Lamar L. Fleming, a Board-certified orthopedic surgeon, who related that appellant reported pain and numbness in her feet and toes and that she had been diagnosed with fibromyalgia. Dr. Fleming diagnosed bilateral bunions, the right worse than the left. He also noted that appellant had a nondermatomal distribution of pain and subjective complaints.

The case remained dormant until appellant submitted a January 23, 2007 statement that sought to reopen her claim. Appellant indicated that she experienced pain radiating up her arm and shoulder that had worsened. She stated that her primary care physician had referred her to a neurologist.

On September 26, 2007 appellant filed a notice of recurrence of a medical condition, relating the pain and numbness in her neck, hand and arm to the October 5, 1997 work injury. She also listed other dates of injury, which included April 17, 1998, February 10, July 7 and October 8, 2004. Appellant did not stop work.

By letter dated March 7, 2008, the Office informed appellant of the evidence needed to support her claim and requested that she submit such evidence within 30 days. In a separate letter, it informed her that no compensation was previously paid under the 1997 claim.

On March 24, 2008 the Office received a February 20, 2004 notice of recurrence filed by appellant for disability beginning February 6, 2004. Appellant described pain to her arms, legs and back. She alleged that repetitive motion, excessive computer use and drawing blood caused her condition. Appellant noted that she was unable to bend or walk for long periods. On March 24, 2008 the Office received an undated statement from appellant indicating that, on April 17, 1998, she returned to the health clinic for wrist and hand pain related to her job duties which included phlebotomy, data entry and drawing blood.

In an April 11, 2008 decision, the Office denied appellant's claim for a recurrence of disability on February 6, 2004. It noted that the 1997 claim was originally received as a simple uncontroverted claim with no lost time from work. The Office noted that the merits of the claim were never formally considered and that the 1997 record did not provide sufficient medical documentation to establish a permanent condition.

Appellant filed an appeal with the Board.¹ On January 13, 2009 the Board issued an order remanding the case as the record was incomplete. The case was remanded for reconstruction and proper assemblage of the case record and an appropriate merit decision issued on appellant's claim in order to preserve her right to appeal to the Board.

By decision dated March 20, 2009, the Office denied appellant's claim for a recurrence of disability on February 6, 2004 as the evidence did not establish that it was due to an accepted work injury. It noted that the case was originally treated as a simple uncontroverted claim with no lost time from work and the medical evidence was insufficient to show that she had a permanent condition. The Office found that the additional evidence received was insufficient to establish the alleged condition.

On April 2, 2009 appellant requested a hearing, which was scheduled for July 23, 2009. In a July 23, 2009 memorandum to the file, the Office hearing representative noted that appellant arrived for the hearing but discovered that the employing establishment representative was present. Appellant refused to proceed and left. The hearing representative conducted a review of the written record.

By decision dated September 4, 2009, the hearing representative affirmed the March 20, 2009 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or

¹ Docket No. 08-1607 (issued January 13, 2009).

² 5 U.S.C. §§ 8101-8193.

³ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁵

ANALYSIS

The record reflects that, on October 5, 1997, the Office received a claim as a simple uncontroverted case with no time loss from work. Appellant filed a notice of recurrence of disability on February 20, 2004 and September 6, 2007 alleging a recurrence of her medical condition commencing February 6, 2004. By letter dated March 7, 2008, the Office advised her of the evidence needed to establish her claim. It denied appellant's claim for a recurrence without establishing whether she established an injury in the performance of duty in 1997.

The Board notes that the issue is not whether she sustained a recurrence of disability but rather whether she sustained an injury in the performance of duty. The Office never formally adjudicated the claim and no particular condition was ever accepted. While appellant filed a traumatic injury claim, it appears that she is alleging her condition arose over a period of time, as opposed to a single workday or shift.⁶ The Board will treat this as a claim as one for an occupational disease.⁷

Appellant alleged that her bilateral wrist, hand, neck and shoulder conditions were caused by the duties of her position as a medical technician, which included typing and drawing blood. The Board notes that there is no evidence refuting that the claimed employment factor, typing and drawing blood at work, occurred. Consequently, appellant has established that she typed and drew blood at work. The medical evidence is insufficient to establish that her neck or upper extremity conditions were caused or aggravated by typing and drawing blood at work or by other factors of her federal employment.

⁵ *Id.*

⁶ The Office's regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee). An occupational disease or illness is a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q).

⁷ See Federal FECA Procedure Manual, Part 2 -- Claims, *Development of Claims*, Chapter 2.800.4(b) (January 2003) (regarding Office's obligation to obtain the appropriate claim form when an incorrect form is submitted).

In an October 14, 1997 report, Dr. Duplechan noted that appellant reported right dorsal wrist pain and paresthesias along the dorsal aspect of the forearm and arm with excessive typing and wrist extension. He diagnosed pain in the right dorsal wrist, ganglion cyst, mild tendinitis and right upper bilateral carpal tunnel syndrome. While Dr. Duplechan noted that appellant related that she had pain with excessive typing and wrist extension, the Board notes that he did not offer any opinion addressing whether factors of appellant's employment had caused or aggravated her diagnosed condition.⁸ Consequently, the Board finds that this evidence is insufficient to establish appellant's claim.

In an October 14, 1997 note, Dr. Fletcher found no evidence of carpal tunnel syndrome. This report does not support that appellant has an employment-related condition and is insufficient to establish her claim. The August 3, 1998 report from Dr. Fleming noted that appellant had complaints of pain and numbness in her feet and toes and had been diagnosed with fibromyalgia. Dr. Fleming diagnosed bilateral bunions and nondermatomal pain but did not address whether the claimed conditions were employment related. This diminishes the probative value of the report.

Appellant provided reports from an occupational therapist but an occupational therapist is not a "physician" within the meaning of the Act.⁹ The record also contains nurse's notes. Health care providers such as nurses, acupuncturists, physicians' assistants and physical therapists are not physicians under the Act. Their opinions on causal relationship do not constitute probative medical evidence and have no weight or probative value.¹⁰

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.¹¹ Neither the fact that the condition became apparent during a period of employment nor the belief that the condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship. Causal relationship must be substantiated by reasoned medical opinion evidence, which is appellant's responsibility to submit.¹²

As there is no probative, rationalized medical evidence addressing and explaining why appellant's hand, neck and shoulder conditions were caused and/or aggravated by factors of her employment, appellant has not met her burden of proof in establishing that she sustained a medical condition in the performance of duty causally related to factors of her employment.¹³

⁸ *Linda I. Sprague*, 48 ECAB 386 (1997) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship).

⁹ See 5 U.S.C. § 8101(2); *Jerre R. Rinehart*, 45 ECAB 518 (1994).

¹⁰ *Jane A. White*, 34 ECAB 515, 518 (1983).

¹¹ See *Joe T. Williams*, 44 ECAB 518, 521 (1993).

¹² *Id.*

¹³ The Board notes that, subsequent to the Office's September 4, 2009 decision, appellant submitted additional evidence. The Board has no jurisdiction to review this evidence for the first time on appeal. 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).

On appeal, appellant generally expressed disagreement with the Office's decision also that the employing establishment failed to disclose information. As noted, the Board previously remanded the case for reconstruction of the record and the record on appeal supports that the Office followed the Board's instructions. Appellant indicated that she gave the hearing representative permission to contact her physician, but it is appellant's burden of proof to submit medical evidence to the record to establish her claim.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained an injury in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the September 4, 2009 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: August 23, 2010
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board